

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,	)	
DEPARTMENT OF ECOLOGY,	)	
	)	
Plaintiff,	)	No.
	)	
v.	)	SUMMONS
	)	
UNITED STATES OF AMERICA,	)	
on behalf of the	)	
DEPARTMENT OF THE AIR FORCE,	)	
	)	
Defendant.	)	
_____	)	

TO: The United States of America  
Department of the Air Force

AND TO: J. D. McCubbin, its attorney

A lawsuit has been started against you in the above-entitled court by the Washington Department of Ecology ("Ecology"). Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a current decree, a copy of which is also attached. Accordingly, this notice shall not require the filing of an

answer. Further, all disputes arising under this cause shall be resolved under the terms of the consent decree.

DATED this \_\_\_\_\_ day of May, 1988.

KENNETH O. EIKENBERRY  
Attorney General

JEFFREY S. MYERS  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington  
Department of Ecology

Office of the Attorney General  
Ecology Division, MS: PV-11  
Olympia, WA 98504  
(206) 459-6134

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,	)	
DEPARTMENT OF ECOLOGY,	)	
	)	
Plaintiff,	)	No.
	)	
v.	)	COMPLAINT
	)	
UNITED STATES OF AMERICA,	)	
on behalf of the	)	
DEPARTMENT OF THE AIR FORCE,	)	
	)	
Defendant.	)	
_____	)	

DESCRIPTION OF THE ACTION

1. This action is brought by the State of Washington, Department of Ecology to lodge a settlement agreement for a voluntary remedial action at a facility where hazardous substances have been deposited, stored, disposed of or otherwise came to be located. The site is located in Spokane County, approximately two miles north of the town of Colbert and is known as the Colbert Landfill Site.

JURISDICTION AND VENUE

2. This action arises under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601, et seq. This court has jurisdiction pursuant to 42 U.S.C. § 6913(b).



3. Pendant jurisdiction lies in this court for state claims arising under ch. 70.105B RCW.

4. Venue lies in this court pursuant to 42 U.S.C. § 9613(b) as the release of hazardous substances occurred solely in the Eastern District of the State of Washington.

#### PARTIES

5. The State of Washington, Department of Ecology (Ecology) is authorized to conduct, provide for conducting or require potentially liable persons, or potentially responsible parties to conduct remedial actions to remedy a release or threatened release of hazardous substances and to investigate and respond to hazardous substances releases pursuant to ch. 70.105B RCW.

6. Defendant, United States of American on behalf of the Department of the Air Force (Air Force), is a governmental agency which operates Fairchild Air Force Base in Spokane County and which is a potentially responsible party under 42 U.S.C. § 9607 and a potentially liable person under RCW 70.105B.040.

#### FACTS OF THE CASE

7. The Colbert Landfill is a forty-acre closed landfill operated by Spokane County between approximately 1968 and 1981.

8. During the operational life of the Colbert Landfill, the Air Force operated Fairchild Air Force Base in Spokane



County. Liquid wastes were generated by the Air Force which included hazardous substances, primarily chlorinated solvents.

9. The Air Force arranged for disposal of its liquid wastes at the Colbert Landfill and disposed of them at the landfill from at least 1975 to 1980.

10. The hazardous substances contained in the Air Force's wastes have entered into aquifers underlying the Colbert Landfill and have migrated beyond the perimeter of the landfill. Hazardous substances identified in groundwater include: 1,1,1-Trichlorethane (TCA); 1,1-Dichlorethylene (DCE); 1,1-Dichloroethane (DCA); Trichloroethylene (TCE); Tetrachloroethylene (PCE); and Methylene Chloride (MC).

11. As a result of the release of hazardous substances from the Colbert Landfill, Ecology has undertaken response action, in conjunction with the Environmental Protection Agency, to implement a remedial action at the Site. The required remedial action will involve identification of areas of contaminated groundwater, location of barrier extraction wells to capture such contamination and pumping, treatment and discharge of groundwater. Additionally, provision of an alternate water supply to local residents in the area of contamination will be required.

12. In performing this response action, Ecology has incurred costs at or in connection with the Site. To date, the State of Washington, Department of Ecology has expended

approximately \$285,000. Ecology will continue to incur costs associated with oversight and implementation of the remedial action at the Colbert Landfill Site.

#### FIRST CLAIM

13. The plaintiff realleges the assertions made in paragraphs 1 through 12.

14. The Air Force is a potentially responsible party and is jointly and severally liable for the release of hazardous substances under 42 U.S.C. § 9607(a)(3) as a generator of hazardous substances who arranged for disposal of such substances at the Colbert Landfill. Pursuant to 42 U.S.C. § 9607(a)(4)(A), the Air Force is liable for all state costs of remedial action not inconsistent with the National Contingency Plan.

#### SECOND CLAIM

15. The plaintiff realleges the assertions made in paragraphs 1 through 14.

16. The Air Force is a potentially liable person under RCW 70.105B.040(1)(c) as a person who arranged for disposal of hazardous substances at the Colbert Landfill and is jointly and severally liable for the costs of remedial action resulting from the release of hazardous substances from the Colbert Landfill.

17. In order to protect the public health or welfare and the environment, Ecology has determined, pursuant to RCW



70.105B.070, that remedial action needs to be taken to abate the release or threatened release of hazardous substances from the Site.

18. RCW 70.105B.030 empowers Ecology to require potentially liable persons to conduct a remedial action or remedy or release or threatened release of a hazardous substance.

19. Ecology has notified the Air Force that it is a potentially liable party and provided them a reasonable opportunity to propose a voluntary remedial action.

20. Ecology and the Air Force, pursuant to RCW 70.105B.070 have reached agreement providing for voluntary remedial action.

21. Pursuant to RCW 70.105B.070, this voluntary settlement agreement is embodied in a proposed Consent Decree, filed with the superior court simultaneous with the filing of the Complaint, It provides for appropriate remedial action at the Site. The court shall allow at least 30 days for public comments before the proposed Decree is entered and the Department of Ecology shall file with the court any written comments received on the proposed Decree.

22. Without making any admissions as to the factual or legal allegations contained in this Complaint, the Air Force has consented to undertake voluntary remedial action as embodied in a proposed Consent Decree. The Air Force retains



the right to controvert any factual or legal allegations in this Complaint but agrees to the entry of the Decree and agrees to not contest jurisdiction or venue.

PRAYER FOR RELIEF

WHEREAS Ecology and the Air Force have voluntarily entered into the proposed Consent Decree, Ecology requests, pursuant to RCW 70.105B.070, that the court lodge the Decree, and allow thirty (30) days for public comments on the terms of the Decree, and after consideration of such comments and upon joint motion of Ecology and the Air Force, enter the Decree. Ecology further requests that the court retain jurisdiction to enforce the terms of the Decree.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

KENNETH O. EIKENBERRY  
Attorney General

JEFFREY S. MYERS  
Assistant Attorney General  
Attorneys for Plaintiffs  
State of Washington  
Department of Ecology

Office of the Attorney General  
Ecology Division, MS: PV-11  
Olympia, WA 98504  
(206) 459-6134

DRAFT

ACCEPTANCE OF SERVICE

CLERK'S STAMP

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON )  
DEPARTMENT OF ECOLOGY, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
on behalf of the DEPARTMENT )  
OF THE AIR FORCE, )  
Defendant. )

No. \_\_\_\_\_  
CONSENT DECREE

TABLE OF CONTENTS

I.	AGREEMENT OF PARTIES . . . . .
II.	JURISDICTION AND VENUE . . . . .
III.	PARTIES BOUND. . . . .
IV.	PERFORMANCE REQUIRED . . . . .
V.	COVENANT NOT TO SUE. . . . .
VI.	EFFECTIVE AND TERMINATION DATES. . . . .
VII.	RETENTION OF JURISDICTION. . . . .
VIII.	LODGING OF DECREE WITH THE COURT AND PUBLIC COMMENT. .

KENNETH O. EIKENBERRY, ATTORNEY GENERAL

Assistant Attorney General

Wa. Telephone

I.

AGREEMENT OF PARTIES

The parties agree that:

A. The State of Washington is filing the complaint in this action simultaneously with the proposed Consent Decree. The Plaintiffs in the complaint seek (1) an injunction requiring the Defendant to abate the release or threat of release of hazardous substances from the Site ("Site"), as hereafter defined, and to remedy hazardous conditions presented to the public health, welfare and the environment by the Site, and (2) reimbursement of response costs incurred or to be incurred by the United States or the State in connection with the Site.

B. The relief sought against the Defendants would require remedial actions as provided for in the Record of Decision ("ROD") signed on September 29, 1987 by the Regional Administration, Region 10, the United States Environmental Protection Agency;

C. The Defendants deny any legal or equitable liability under any statute regulation, ordinance or common law for damages caused by the generation, handling, storage, treatment, transportation, or disposal of hazardous substances at the Site;

D. This Consent Decree, the entry hereof, and compliance herewith shall not be admissible in any judicial or administrative proceeding and shall not be an admission of any fact dealt with herein or an admission of liability for any purpose; the Consenting Defendants retain the right to controvert in any subsequent



1 proceeding, other than in proceedings to enforce this Consent Decree,  
2 the validity of or the responsibility for any of the factual or legal  
3 determinations made herein;

4 E. To accomplish the objectives set forth in this Consent  
5 Decree the parties have agreed that it is in the public interest and  
6 in the interest of the parties for this case to be resolved without  
7 litigation, before the taking of any testimony and without the  
8 admission of any issue of fact or law;

9 F. As provided in Section 113(f) of CERCLA, 42 U.S.C. § 9613(f)  
10 and RCW 70.105B.070(6), the Defendant shall not be liable for claims  
11 for contribution regarding matters addressed in this Consent Decree;

12 G. By entering into this Consent Decree, the parties do not  
13 intend to discharge nonsettling persons from any liability they may  
14 have with respect to matters alleged in the complaint; and

15 H. Plaintiffs and Defendants, by their representatives, have  
16 agreed to this Consent Decree;

17 NOW, THEREFORE, it is ORDERED as follows:

18 II.

19 JURISDICTION AND VENUE

20 A. This Court has subject matter jurisdiction over this matter  
21 pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 6901 et seq.,  
22 42 U.S.C. §§ 9601 et seq., ch. 70.105 RCW, Ch. 90.48 RCW, and  
23 Ch. 70.105B RCW and personal jurisdiction over the signatories con-  
24 senting hereto. Each signatory submits itself to the jurisdiction of  
25 the Court for all matters relating to this Consent Decree.  
26

1 B. The parties stipulate that venue in this court is proper  
2 pursuant to 42 U.S.C. § 9613(b) and request that a single judge be  
3 assigned to decide all issues arising out of this Consent Decree.

4 III.

5 PARTIES BOUND

6 This Consent Decree shall apply to and be binding upon the  
7 signatories, their successors and assigns.. The undersigned  
8 representative of each party certifies that he or she is fully  
9 authorized to enter into the terms and conditions of this Consent  
10 Decree and to execute and legally bind such party to this document.  
11 The Defendants shall provide a copy of this Consent Decree to each  
12 contractor or subcontractor retained to perform work contemplated by  
13 this Consent Decree and shall condition any contract for such work  
14 on compliance with this Consent Decree.

15 IV.

16 PERFORMANCE REQUIRED

17 A. The United States Environmental Protection Agency and the  
18 United States Department of the Air Force have agreed on an Admini-  
19 strative Order on Consent and Interagency Agreement (IAG) attached  
20 hereto as Exhibit 1. The terms of this agreement are by this refer-  
21 ence adopted herein. The Air Force agrees to abide by the terms of  
22 this agreement in satisfaction of its liability under CERCLA, 42  
23 U.S.C. § 9601 et seq., and under ch. 70.105B RCW.

24 B. In the event that the remedial action undertaken at the  
25 Colbert Landfill is abandoned, cancelled, or terminated before issu-  
26 ance of a certification of completion, Ecology agrees to reimburse

27 CONSENT DECREE



1 the Air Force for a portion of funds paid pursuant to this Consent  
2 Decree and the IAG. The refund shall be in an amount which is the  
3 same ratio to the expedited final <sup>settlement</sup> amount as the total <sup>expenses partial</sup> costs of reme-  
4 diation <sup>until</sup> ~~up to~~ termination are to the total estimated costs of reme-  
5 diation estimated at the time of termination.

6 V.

7 COVENANT NOT TO SUE

8 A. Findings

9 This settlement agreement is made to finance remedial action at  
10 the Colbert Landfill site. The Director finds that issuance of a  
11 covenant not to sue is appropriate and within the public interest as  
12 defined by RCW 70.105B.080(2). The remedial action to be implemented  
13 will achieve cleanup levels that prevent actual and potential harm to  
14 human health and the environment as required by RCW 70.105B.060.

15 B. Except as specifically provided in Paragraph D of this  
16 Section, the State of Washington covenants not to sue the United  
17 States on behalf of the Department of the Air Force for Covered  
18 Matters. Covered Matters shall include any and all civil liability  
19 to the State for causes of action arising under the Hazardous Waste  
20 Cleanup Act, Ch. 70.105 RCW, or Ch. 90.48 regarding contamination  
21 from hazardous substances identified in the ROD and originating  
22 from the Site.

23 C. Except as specifically provided otherwise in paragraph D,  
24 this covenant not to sue shall take effect upon <sup>satisfactory performance of</sup> ~~certification by the~~  
25 ~~the terms of the IAG, attached hereto as Exhibit 1. Upon performance~~  
26 ~~Governments of the completion of the Remedial Action.~~  
27 ~~by the Air Force, a declaration of completion shall be issued~~  
~~by Ecology~~ <sup>according to the terms of RCW 70.105B.090.</sup>  
CONSENT DECREE



1 D. Notwithstanding any other provision in this Consent Decree,  
2 the State of Washington reserves the right to institute proceedings  
3 in this action or in a new action (1) seeking to compel the Defendant  
4 to perform response actions at the Site in addition to or other than  
5 the Remedial Action of (2) seeking reimbursement to the State of  
6 Washington for such response costs, if:

7 (a) for proceedings before certification of completion of  
8 the Remedial Action, (i) conditions at the Site, previously unknown  
9 to the State of Washington, are discovered after the entry of this  
10 Consent Decree, ~~or information is received, in whole or in part, after~~  
11 ~~the entry of this Consent Decree,~~ and these previously unknown condi-  
12 tions ~~or this information~~ indicate that the Remedial Action is not  
13 protective of human health and the environment; or (ii) new informa-  
14 tion is received after entry of this Consent Decree and the new infor-  
15 mation reveals a significant quantity of a hazardous substance or  
16 condition not previously identified in the ROD or this Consent Decree  
17 as being present at the Site, in an area of the Site other than as  
18 described in the ROD or this Consent Decree, or in quantities signifi-  
19 cantly greater than in this ROD or this consent Decree;

20 (b) for proceedings after certification of completion,  
21 (i) conditions at the Site, previously unknown to the State of  
22 Washington are discovered after certification of completion or infor-  
23 mation is received, in whole in part, after certification of comple-  
24 tion, and these previously unknown conditions or this information  
25 indicate that the Remedial Action is not protective of human health  
26

1 and the environment, or (ii) after certification or completion, the  
2 Governments discover the release or threatened release from the Site  
3 of hazardous substances not identified in the ROD as originating from  
4 the Site.

5 E. The State of Washington's right to institute proceedings  
6 in this action or in a new action seeking to compel the Defendant to  
7 perform response actions in addition to or other than the Remedial  
8 Action regarding contamination originating from the Site, or seek-  
9 ing reimbursement of the State of Washington for the costs of such  
10 response actions, may only be exercised where the conditions in  
11 paragraph D are met.

12 F. Notwithstanding any other provision in this Consent  
13 Decree, the covenants not to sue under this Section shall not  
14 relieve the Consenting Defendants of their obligation to meet and  
15 maintain compliance with the requirements set forth in this Consent  
16 Decree, including the requirement of the Air Force to make  
17 payments as specified in the IAG, (Exhibit 1)  
VI.

#### 18 EFFECTIVE AND TERMINATION DATES

19 A. This Consent Decree shall be effective upon the date of  
20 its entry by the Court.

21 B. Termination of this Consent Decree may only be effected  
22 upon completion of all Remedial Action activities, reimbursement of  
23 Governments costs and resolution of any outstanding disputes pursuant  
24 to this Decree. Termination of this Consent Decree shall not affect  
25 the Covenant Not to Sue, Section XXIX, which shall remain in effect  
26 as an agreement between the parties.



1 VII.

2 RETENTION OF JURISDICTION

3 This Court shall retain jurisdiction over this matter for the  
4 purposes of interpreting, implementing, modifying, enforcing or  
5 terminating the terms of this Consent Decree, and of adjudicating  
6 disputes between the parties under this Consent Decree.

7 VIII.

8 LODGING OF DECREE WITH THE COURT AND PUBLIC COMMENT

9 This Consent Decree shall be lodged with the Court for a period  
10 of 30 days for public comment pursuant to the provisions of  
11 RCW 70.105B.070(5) and WAC 173-340-040(7), it shall not be submitted  
12 to the Court for execution until the expiration of that period. The  
13 State of Washington, Department of Ecology, reserves the right to  
14 withdraw or withhold its consent to a judgment based on this Consent  
15 Decree if the comments, views and allegations concerning the Consent  
16 Decree disclose facts or considerations which indicate that the Consent  
17 Decree is inappropriate, improper or inadequate.

18 Comments on the Consent Decree shall be submitted to:  
19  
20  
21  
22  
23  
24  
25  
26



1       The State of Washington and the United States on behalf of the  
2 Department of the Air Force by their duly authorized representatives  
3 agree to this Consent Decree subject to the public notice require-  
4 ments found at RCW 70.105B.070(5) and WAC 173-340-040(7).

5                   The State of Washington  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16

17                   The United States of America for  
18                   the Department of the Air Force  
19  
20  
21  
22  
23  
24  
25  
26